

**IN THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF VIRGINIA CHARLOTTESVILLE
DIVISION**

BRENNAN M. GILMORE,

Plaintiff,

v.

ALEXANDER E. (ALEX) JONES, et al.,

Defendants.

No. 3:18-cv-00017-NKM-JCH

**DEFENDANT JAMES HOFT'S SURRESPONSE IN OPPOSITION TO THIRD PARTY
GOVERNOR OF VIRGINIA'S MOTION TO QUASH SUBPOENA (Dkt. #293)**

Governor asserts that Hoft mischaracterizes Plaintiff's allegations, and that the subpoena's scope is narrower as a result. To extricate himself from the subpoena, he argues the First Amended Complaint (FAC) exclusively alleges statements alleging a federal – *as opposed to State or private* – conspiracy to instigate violence and then cover up all involvement/planning of such violence and then spin all events toward political ends. Dkt. #358, at p. 5. Governor needs to revisit Plaintiff's FAC.

This Court has stated that Plaintiff alleges that Hoft and the other defendants alleged that Plaintiff was a “deep state operative who conspired to orchestrate violence in Charlottesville for political purposes.” *Gilmore v. Jones*, 370 F. Supp. 3d 630, 642 (W.D. Va. Mar. 29, 2019). Plaintiff incorporated ALL of the factual allegations of his FAC into Count One against Hoft, et al. FAC (Dkt. #29), at p. 79. Plaintiff makes a large number of *general* and specific allegations in his complaint, but these can be distilled into a non-comprehensive list. See **Figure 1** below. Specifically, Plaintiff alleges, among other things (FAC, at listed paragraphs, emphasis added):

67. Through statements such as “[t]he media knows exactly who he is yet played it off like a casual observer,” **and “it looks like the State Department was involved in Charlottesville and is trying to cover it up,”** and by describing Mr. Gilmore's presence at and later description of the events in Charlottesville as proving how “the Deep State is working with the liberal media to shape narrative and fool the American people,” Hoft implies a number of assertions of fact that are provably false: 1) that the State Department organized the Charlottesville rioting and/or attack; 2) that Mr. Gilmore participated in the State Department's planning of the Charlottesville riots and/or attack; 3) that the State Department conspired to conceal these facts by removing information about Mr. Gilmore from a number of internet sources; 4) that media outlets were involved in the conspiracy because they knew Mr. Gilmore was a State Department employee; **5) that the media characterized Mr. Gilmore as a casual observer because they were working in concert with Mr. Gilmore, the State Department, and other government agencies to cover up their involvement in the conspiracy; and 6) that all of these conspirators worked together to deceive the public about what happened in Charlottesville that day.**

70. By both **stating and insinuating that Mr. Gilmore was an accomplice to a government plot to stage a violent riot and/or attack that killed and injured individuals in Charlottesville, and cover it up**, Hoft falsely brands Mr. Gilmore as a criminal, a fraud, and an accessory to murder.

80. After the attack in Charlottesville, Defendant Hoft used the factually inaccurate screenshots from Reddit to invent a nefarious role and identity for Mr. Gilmore in order to promote this preconceived narrative: **that the violence in Charlottesville was a creation of the “Deep State,” that Mr. Gilmore was a central accomplice to that effort, and that the media was working with the “Deep State” to cover up their role in Charlottesville and deceive the American public.**

Gilmore’s allegations are very general: that Hoft said Gilmore was a member of the “deep state” and worked with the State Department and **other government agencies**” to “stage a violent riot and/or attack that killed and injured individuals in Charlottesville, and cover[ed] it up,” that the “violence in Charlottesville was a creation of the ‘Deep State,’ that “Mr. Gilmore was a central accomplice to that effort, **and that the media was working with the ‘Deep State’** to cover up their role in Charlottesville and deceive the American public.” *Id.*, at pars. 67, 70, 80.

Allegation Category	Page or Paragraph
There was no public-private conspiracy surrounding the UTR	Page 2; Par. 30, 31, 32, 33, 34, 35, 36, 38, 42, 43, 46, 47, 48, 49, 50, 58, 59, 60, 63, 64, 65, 66, 69, 70, 79, 80, 83, 84, 85, 91, 94, 101, 105, 109, 110, 120, 126, 129, 144, 145, 208, 214, 239
Gilmore was not part of any public-private conspiracy surrounding the UTR	Page 2; Par. 27, 30, 31, 32, 33, 34, 35, 36, 38, 42, 43, 46, 47, 48, 49, 50, 58, 59, 60, 63, 64, 65, 66, 69, 70, 79, 80, 83, 84, 85, 91, 94, 101, 105, 109, 110, 120, 126, 129, 144, 145, 208, 214, 239
Media involvement was purely organic and not staged, scripted, or message coordinated to skew coverage	Page 2; Par. 31, 32, 35, 36, 38, 42, 43, 46, 47, 48, 49, 50, 58, 59, 60, 63, 64, 65, 66, 69, 70, 79, 80, 83, 84, 85, 91, 94, 101, 105, 126, 129, 144, 145
Fields’ car crash was deliberate terrorism	Page 1, 2, 62 (Tweet of Gilmore); Par. 29, 30, 31, 34, 38, 43, 49, 62, 120, 160 n. 74
Gilmore’s told the truth in his numerous interviews	Page 2, 3; Par. 31, 32, 34
Defendants are propagandists, while	Page 2, 3; Par. <i>Passim</i> .

facts as presented by Plaintiff are objectively true	
UTR Pro-Lee consisted exclusively of bigots	25, 26, 145, and implicit throughout.
Defendants are grotesque bigots	Page 2, 3; Par. <i>Passim</i> .

Figure 1.

Plainly, Governor is mistaken in his analysis. First, the FAC does not limit its allegations to the State Department. Second, even were this the case, the State Department wouldn't conspire with itself alone to perpetrate a crime against the public. *Logically, it would need assistance to execute a ploy of the magnitude **Plaintiff alleges***. Hoft's First Amendment Truth defense does not require that he prove the literal truth of his alleged specific statements or their general 'sting' or context. § 5:22. Substantial truth test: generalized defamatory charges, 1 Law of Defamation § 5:22 (2d ed.) (emphasis added) (citing to Prosser and Keeton on Torts § 116, at 841 (5th ed. 1984), and Restatement (Second) of Torts, § 581A, comment c). If he proves substantial truth, Plaintiff loses. *Id.* Were Hoft to adduce evidence that Plaintiff was part of an exclusively *private* conspiracy to instigate violence and manipulate the public's perception of public and private events surrounding the Unite the Right Rally, Hoft would be entitled to submit this evidence to the jury. It is for the jury alone to decide falsity. Hoft filed a Motion to Dismiss, and this Court already decided that the statements as pled by Plaintiff were actionable defamation. *Gilmore v. Jones*, 370 F. Supp. 3d 630 (W.D. Va. Mar. 29, 2019). The Court also *refused* to dismiss this suit. *Id.* Hoft has been forced by Plaintiff and the United States Government into this judicial process in which he stands to lose his property. Hoft is **entitled** to make his case or else he is robbed of due process rights and, with them, his First Amendment rights as well.

Governor concedes he asserts no privilege. Reply (Dkt. #358), at p. 3 ("The Governor did not provide a privilege log because the Governor is not asserting a privilege"). After declaring this, he incorporates the briefed arguments of the Virginia State Police and the Virginia Fusion

Center in their joint Motion to Quash (Dkts. #287 and 351). Likewise, Hoft incorporates his Responses and Surreponses to these arguments and to those of the Northern Virginia Regional Intelligence Center, as well as all accompanying Exhibits (Dkts. #313, 329, 360) as though fully restated and set-forth herein. Governor argues that a privilege log is unnecessary because law enforcement privileges are “not the Governor’s to waive or assert.” Governor cites no support for this proposition.¹ The Governor is the *personal embodiment* and manifestation of the executive branch of government. He **ordered** the Virginia State Police – among other agencies – to secure Charlottesville on August 12, 2017, and he unilaterally dispatched additional state resources that same day when he declared a state of emergency simultaneously with Chief Al Thomas’ declaration of unlawful assembly. It’s a curious argument for a sitting Governor to argue, as a matter of law, he lacks authority and command over his own agencies. But, having made such an argument, it is clearly a firm waiver of any and all privileges Governor may possess.

For all of the reasons stated above, in each brief responding to the instant Motion, all of the briefs cited herein, and all arguments he may make at the hearing on June 14, 2021, Hoft asks the Court to find that the Governor has waived all possible privileges and to Order the Governor to produce all responsive records within 20 days.

Dated: June 11, 2021

¹ Neither the Virginia State Police, the Virginia Fusion Center, nor the Northern Virginia Regional Intelligence Center address whether the Governor holds the same or concurrent privilege as their entities.

Respectfully submitted,

By: /s/ John C. Burns
John C. Burns, admitted *pro hac vice*
BURNS LAW FIRM
P.O. Box 191250
Saint Louis, MO 63119
Tel: (314) 329-5040
Fax: (314) 282-8136
TBLF@PM.ME

Timothy B. Hyland
Virginia Bar No. 31163
HYLAND LAW PLLC
1818 Library Street, Ste. 500
Reston, VA 20190
(703) 956-3548 (Tel.)
(703) 935-0349 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2021, a true and accurate copy of the foregoing was served on all parties of record via the Court's ECF System.

/s/ John C. Burns